GEORGE VAL SNOW
(ON JUDICIAL REMAND)

IBLA 79-520 Decided March 7, 1984

Appeal from the decision of the Utah State Office, Bureau of Land Management, rejecting an application to amend homestead patent No. 1077267.

Reversed; George Val Snow, 46 IBLA 101 (1980), vacated; recommended decision adopted as modified.

1. Conveyances: Generally -- Equitable Adjudication: Generally -- Patents of Public Lands: Amendments

Where a stranger to the original patentee acquires a certain, specific tract of land through mesne conveyances and then seeks to have the patent amended so that he can acquire other land instead, he must demonstrate first that there was an error in the patent's land description and, second, that he is deserving as a matter of equity and justice to be granted that which was actually earned by the original patentee.

APPEARANCES: Jack L. Schoenals, Esq., Salt Lake City, Utah, for appellant; David K. Grayson, Esq., Salt Lake City, Utah, Department counsel.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 29, 1980, this Board first decided the appeal of George Val Snow by affirming the decision of the Bureau of Land Management which rejected Snow's application to amend the land description in the homestead patent issued in 1933 to Peter Madsen, Snow's remote predecessor in interest.

Snow alleged that the patent mistakenly conveyed land that Madsen had not entered, and omitted land which was part of the Madsen homestead. The records of the Madsen homestead had been misplaced in Archives and could not be recovered at that time, so that it was impossible to verify or refute the allegation. However, the Board, in effect, held that even assuming the allegation to be true, it was irrelevant, because Snow had no privity of interest with Madsen, no equitable entitlement to get now what Madsen should have got some 47 years before, and that Snow, as the purchaser of certainly-described land with a record chain of title, had a duty to identify the land he was buying. We noted that the identification of a mistake in a patent is not the controlling issue, but only serves to invest the Secretary with the legal

authority to determine whether considerations of equity and justice warrant the exercise of his discretion to issue an amended patent, and we concluded that the circumstances of this case did not so warrant. George Val Snow, 46 IBLA 101 (1980).

On review of our decision the Court found that it was not possible on the records before it to determine the matter, and remanded the case for the purpose of receiving evidence and making certain specific findings. Snow v. Watt, Civ. No. C-80-0231A (D. Utah, Sept. 3, 1982).

The case was referred for a hearing before Administrative Law Judge Morehouse. In the meantime, the records of the Madsen homestead entry were recovered from Archives. These records, together with the evidence adduced at the hearing, demonstrated rather convincingly that the patent had indeed mis-described part of the land entered and settled by Madsen. However, this fact alone is an insufficient basis upon which to amend a patent pursuant to section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), upon the application of a person other than the original patentee.

The recommended decision by Judge Morehouse concluded that Snow's application should be allowed. We adopt the recommended result on the basis of a somewhat different rationale.

[1] The statute provides that the Secretary may correct patents in order to eliminate error. The first obligation of an applicant for amendment of a land description in a patent, then, is to establish that the description is in fact erroneous. Without a clear showing of error, the Secretary is not empowered to exercise his statutory discretion to favor or disfavor the application. Once the applicant has demonstrated the existence of error in the land description, his next obligation is to show that considerations of equity and justice favor the allowance of his application. Where the applicant is the original patentee, he clearly would be justified in his expectation that the Secretary would amend the error in his patent and allow him the specific land which he had earned entitlement to through his compliance with the particular statute under which the conveyance was made. Others in close privity with the original patentee, such as the immediate heirs of a deceased entryman who were born on and continue to reside on and use the family homestead have a clear equitable interest in what the patentee actually earned by his compliance with the requirements of the law. See Mantle Ranch Corp., 47 IBLA 17, 87 I.D. 143 (1980).

Where, however, the land described by the patent has been conveyed repeatedly by deed or inheritance over the course of several decades, and there is no discernable relationship or privity between the patentee and the most recent purchaser of the patented land, there is no apparent reason for the amendment of the patent. In the instant case, the land described by the patent was sold by the patentee, Pater Madsen, in 1938, to one Herbert Gleave, who sold it in 1942 to Alma Savage, Jr. Following the demise of Savage in 1971, his heirs conveyed the land to Snow in 1978. That same year Snow applied to have the patent amended.

The Board's initial difficulty with this case is attributable to the failure of Snow to make any explanation or showing of why he is deserving to be granted title to the land that Peter Madsen earned instead of the land that Snow and his predecessors had purchased. As we stated in our previous decision, supra, at 46 IBLA 103-04:

> There is no showing of any equitable basis to award the appellant different -- and better -- land than he and his predecessor grantees contracted to buy. If appellant failed to take the measures necessary to assure himself that the land he was purchasing is the land he intended to buy, the Federal Government cannot stand as the warrantor of his expectations. It is noteworthy that appellant filed his application to amend the patent in 1978 -- the same year he reportedly purchased the land described in the patent. Thus, it appears that he could have easily discovered the discrepancy, if any, before he purchased the land.
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> Were this a case where the homesteader himself were able to show that through error he had not been granted what he had earned, or if the homesteader's heirs had been born and reared and remained on the family homestead, only to discover that it had been misdescribed in the patent, a case might be made for amendment pursuant to section 316 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. § 1746 (1976). See Rowland Oswald, 35 IBLA 79, 86-88 (1978). Perhaps even a remote transferee who, in good faith and in the exercise of reasonable diligence, had invested substantially in improving the property, or had paid a purchase price based on the value of the improvements in place, could show that he was deserving of relief.
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> But where, as here, the applicant has no equitable stake in the efforts of the homestead entryman and has no equitable interest in the land appliedfor, but is only the most recent of a succession of purchasers of the patented land over a period of several decades, no relief properly can be afforded.
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> The statute, supra, provides that the Secretary may correct patents, thereby investing him (and those who are delegated to act for him) with discretion in the matter. Before such discretion can be exercised it must clearly appear that an error was, in fact, made. Otherwise, an application to amend would be barred as a matter of law. Once the fact of error in the patent is established, the other circumstances of the case must be examined to determine whether considerations of equity and justice warrant amendment of the patent.
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> * * * [A]ppellant has invested nothing in the improvement of the lands sought. His purchase price could not have been based to any degree on the value of existing improvements on those lands, as they are in ruin and worthless. He obviously

> has not paid taxes on the Federal land he seeks to acquire. 1/ He has no claim, as an heir or lienholder, to what Madsen earned, but only to the land that Madsen sold and he eventually purchased through mesne conveyances.

An applicant for discretionary relief bears the burden of showing that he is deserving by reason of equity and justice to have his application granted. He is the proponent of the rule or order sought. See Hallenbeck v. Kleppe 590 F.2d 852, 855 (10th Cir. 1979).

For example, appellant's counsel argued:

> There is a clear record established that the entry man entered into and possessed and occupied the property for which the applicant George Val Snow is now attempting to obtain an amended patent with a correct description. There is no record or evidence to establish that it would not be just, fair, and equitable for the United States Government to grant such relief to George Val Snow.

This is an unwarranted transposition of the burden. It is the applicant's responsibility to show why he should be granted the discretionary relief for which he has applied.

It is noteworthy that if the error in the patent had described better, more valuable land than that actually earned by Madsen, and the Government had discovered the error after Snow purchased it in 1978, it is most unlikely that the Government could have successfully deprived Snow of the fruits of his bargain by amending Madsen's patent. See, e.g., 43 U.S.C. § 1166 (1976).

Notwithstanding our prior concern for Snow's apparent lack of equitable entitlement expressed in both the Board's majority opinion and in the concurring opinion by Judge Burski at 46 IBLA 106, the hearing before Administrative Judge Morehouse failed to address this issue directly, and the recommended decision by Judge Morehouse includes no findings relating to any equitable entitlement of the appellant to receive what he had applied for. Apparently, all those involved in the hearing proceeded on the assumption that if an error in the patent was demonstrated, the Secretary would be obliged to rectify it. As we have stated above, this is incorrect. Further, no effort was made by the participants at the hearing to show how the reliance on an earlier survey could have resulted in the alteration of the shape of the parcel, a concern emphasized in Judge Burski's separate concurrence.

1/ Our statement that Snow "obviously had not paid taxes on the Federal land he seeks to acquire" is referable to the fact that he purchased his deed in 1978 and filed this application within a short time thereafter, also in 1978. Thus, he lacked the equitable consideration which might accrue to one who had been paying taxes on the property for many years in the genuine belief that he owned the land. Our observation on this point apparently was not understood in the judicial proceeding or at the subsequent administrative hearing.

Nevertheless, the hearing produced ample evidence to establish that Peter Madsen's homestead was mis-described; that Madsen had employed two professionals, including a civil engineer to provide an accurate description, and that their errors went undetected by the field examiner who inspected the entry and approved it for patent on behalf of the General Land Office.

The presentation of evidence concerning the source and perpetuation of the error also yielded, as a kind of unwitting by-product, evidence which serves to establish the necessary equitable premise for the allowance of Snow's application. We will discuss this evidence briefly.

It was shown that Madsen settled a distinctive and unique parcel of land consisting of several little meadows along the floor of a small valley, the side hills of which are steep and rocky. Although Madsen did not file a homestead entry on this land until 1927, he had actually entered and occupied the land some years previously. By 1938, when he sold to Gleave, the place was widely known to everyone in the vicinity as "the Madsen place," "Madsen's Little Meadows," "Pete's homestead," etc. It was delineated by a barb-wire fence, within which were Madsen's dwelling, rabbit pens, a cow shed, cultivated areas, a road, a spring, and other improvements.

It is important to the result that we reach here to understand that the parcel was well-defined, geographically and topographically unique, and that it was widely and firmly reputed and known to be the Madsen homestead. Next, it is important for our purposes to understand that the appellant, Snow, was himself a native of this area who had been born there in 1925, and who had lived in the immediate area for most of his life. He knew the land and its history and had always heard the place referred to as the Peter Madsen homestead. At the time he purchased the land described in Peter Madsen's patent, the boundaries of the land known as the Madsen homestead were still defined by the old deteriorated fence posts and remnants of fence wire. The crumbled ruins of the improvements are still found within the boundaries defined by the fence.

The unique physical character of the land, its clear definition on the ground, the commonly-held understanding by area residents that this was the Madsen homestead, when combined with Snow's personal long-term familiarity with the place and its reputation, provide the essential nexus between the patent error and Snow's application for relief. He quite obviously relied on his own long-term knowledge of the property and its reputation as the Madsen homestead for his assurance that it was the land described in the Madsen patent and the several deeds which comprised the chain of title. Thus, there was a proximal relationship between the original error in the patent and Snow's acquisition. Although he was undeniably negligent in failing to confirm that the land description in the deed he was acquiring accurately described the land he intended to buy, this failure was mitigated by his long familiarity with the land, its local reputation as the Madsen homestead, and the physical definition of the parcel on the ground provided by the fence lines. We conclude, therefore, that appellant had a reasonable basis to believe and expect that what he was acquiring was the land actually entered, settled and earned by Peter Madsen through Madsen's compliance with the homestead law.

Accordingly, the BLM decision appealed from is reversed, this Board's decision styled George Val Snow, 46 IBLA 101 (1980), is vacated; and the recommended decision of Administrative Law Judge Morehouse, as herein modified, is adopted by the Board.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge